

January 17, 1980

0-021A085

Secretary  
Interstate Commerce Commission  
Washington, D.C.

11399  
RECORDATION NO. .... Filed 1425

Date **JAN 21 1980**  
Fee \$ **50.00**

Attn: Recordation Unit

JAN 21 1980 - 3 40 PM

Gentlemen:

INTERSTATE COMMERCE COMMISSION  
CC Washington, D. C.

(a) Request for recording document

In accordance with 49 CFR §1116.4, you are hereby requested to record the enclosed security agreement and assignment. The recordation fee of \$50, and two counterparts of the original document, are enclosed with this request.

(b) Parties to the transaction

Debtor and Guarantor: The Eveready Machinery Company  
805 Housatonic Avenue  
Bridgeport, CT 06604

Secured Party: Connecticut National Bank  
888 Main Street  
Bridgeport, Connecticut 06604

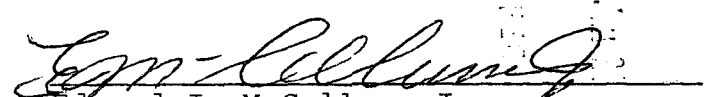
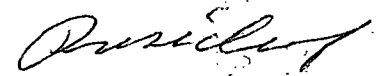
(c) Description


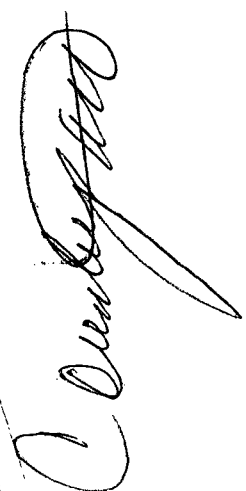
1 Surplus NW-5, EMD 1,000 H.P. Diesel Locomotive formerly Southern Railway No. 2100.

(d) No other property included

(e) No prior recording

(f) This is to certify that the undersigned, as President of The Eveready Machinery Company, has knowledge of the matters set forth herein. Please return the original document to Douglas A. Strauss, Esq., Pullman, Comley, Bradley & Reeves, 855 Main Street, Bridgeport, Connecticut 06604.

  
Edward J. McCallum, Jr.  


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                 Bridgeport, CT      06604

Secured      Connecticut National Bank  
Party:      888 Main Street  
                 Bridgeport, Connecticut      06604

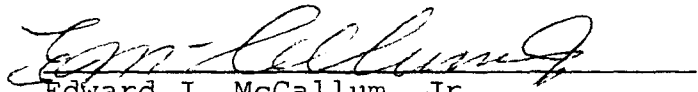
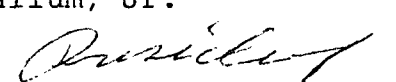
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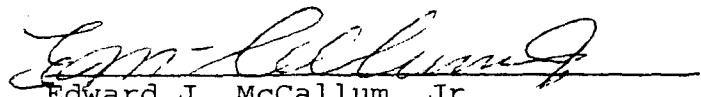
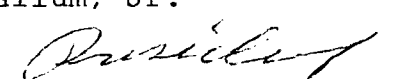
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INTERSTATE COMMERCE COMMISSION

The undersigned, EVEREADY MACHINERY COMPANY, a Connecticut corporation with offices in Bridgeport, Connecticut, (the "Debtor") hereby grants to THE CONNECTICUT NATIONAL BANK, a national banking corporation having its main office at Bridgeport, Connecticut (the "Secured Party") a present and continuing security interest in the Collateral to secure payment of its Guaranty of even date of the promissory note of Massachusetts Central Railroad Corporation dated January 18, 1980 (the obligation of the Guaranty is hereinafter referred to as the "Indebtedness", a copy of the Guaranty is attached hereto and made a part here as Exhibit A).

1. Security And Assignment of Lease.

A. To secure the payment of the Indebtedness, and the timely performance of the covenants and agreements of Debtor as set forth herein, Debtor hereby (i) grants to the Secured Party a security interest in the following equipment, together with all substitutions therefor, replacements thereof and all attachments, accessories and equipment now or hereafter added thereto, and all proceeds thereof, (collectively the "Collateral"): One, EMD 1,000 H.P. Diesel Locomotive formerly designated Southern Railway No. 2100, which shall be used and located in accordance with the lease for said locomotive hereinafter described; and (ii) revocably assigns to Secured Party all of the monies due and to become due Debtor and all of Debtor's right, title and interest as Lessor under a lease (the "Lease") of the above referenced locomotive between Debtor and Massachusetts Central Railroad Corporation ("Lessee"), dated January 18, 1980, and all of the Debtor's rights as Lessor under said Lease, provided that such assignment shall not impose on the Secured Party any of the Lessor's obligations under said Lease.

B. Debtor hereby appoints Secured Party, its successors and assigns, with full power of substitution, Debtor's true and lawful attorney or attorneys, irrevocably, with full power for it and in its name, place and stead, to ask, demand, collect, received, receipt and give acquittances for any and all monies which may be or become due from any other action or proceedings, to make any settlement of any claims, either in its own name or otherwise, which to Secured Party or any such successor or assignee thereof may deem necessary or desirable in order to collect or enforce the payment of any and all amounts which may be or hereafter be or become due or owing on account of the Lease pursuant to the terms of the Lease, or to enforce the performance of any and all obligations under the Lease on the part of any of the parties thereto, and Secured Party is specifically authorized to endorse and sign the

name of Debtor on checks, receipts or other instruments tendered or received in payment or settlement of any such claims.

C. Debtor shall execute and deliver any and all other papers or documents which Secured Party may request to carry out the purposes hereof, or to facilitate the enforcement of the performance of Lessee's lease obligations or the collection of monies due or to become due under the Lease.

D. Debtor warrants and represents (1) that the Lease is the valid and binding agreement of the Lessor and Lessee covering the equipment described above and constituting a part of the Lease, (2) that no other assignment or security interest has been or will be granted or made of the Lease or monies assigned hereunder; (3) that the sums payable under the Lease are subject to no defenses, setoffs or counter-claims and there is no rent now due and owing pursuant to the terms of the Lease nor have there been any payments made on account of the rentals due under the Lease except as set forth in such Lease; (4) that Debtor owns the Collateral free and clear of all liens, security interests, claims and encumbrances, except those created by this Agreement; (5) that all documents evidencing the Lease are genuine and have been executed with proper authority by the Lessee, contain no false statement or misrepresentation, and are not subject to any lien, security interest, claim or offset; (6) that no rental payments have been prepaid under the Lease except as may be set forth in such Lease; (7) that the terms of the Lease are in conformity with all laws and applicable regulations; (8) that to the best of its knowledge and belief, Debtor will be able to perform all of its obligations under the Lease; (9) that the Collateral will not be used or located except in accordance with the terms of the Lease without the prior written consent of Secured Party; (10) that the execution, delivery and performance of this Agreement by Debtor has been duly authorized by all requisite corporate or other action of Debtor and does not (or will not) result in a breach of any term or condition of any term or condition of any other contract or agreement or in the acceleration of any other obligation of Debtor; and (11) that Debtor's principal place of business is as indicated below its signature at the end of this Agreement.

## 2. Debtor's Covenants; Events of Default.

A. Debtor agrees: (1) to defend the Collateral against any claim of any interest therein; (2) to keep the Collateral in good repair without any cost of liability to Secured Party; (3) that all accessions which are or become attached to or a part of the Collateral

are or shall become subject to the terms of this Agreement; (4) not to permit the use of the Collateral in violation of any law or provision of this Agreement; (5) not to sell, assign, transfer, create a security interest in, mortgage, or in any way encumber the Collateral, nor secrete, abandon or remove or attempt to remove it except as permitted under the Lease all without the prior written consent of the Secured Party; (6) to allow Secured Party and its representatives free access and right of inspection at all times and, in the event of loss or damage to the Collateral, to immediately send written notice thereof to Secured Party; (7) to keep the Collateral insured against loss by fire, theft and casualty by insurers, and in form, amount and coverage, satisfactory to Secured Party (and Debtor appoints Secured Party, Debtor's attorney in fact to endorse any loss payment or returned premium check and to make, settle and release any claim under such insurance); (8) to assign and deliver the policies or certificates thereof to Secured Party as additional security, in default of which Secured Party may, at its option, effect such insurance; (9) to pay all taxes, assessments, and charges levied on the Security or for the use, storage, maintenance or repair thereof, and upon Debtor's failure to do so, Secured Party may, at its option, pay them in which event any and all of such payments shall be secured by this Agreement, shall be payable on demand, as an obligation independent hereof, with interest at the legal rate, and shall be deemed a part of the indebtedness for all purposes of collection and the rights of Secured Party hereunder; (10) to pay all costs of filing and recording incurred by Secured Party or its agents in protecting and preserving the Security and its security interest herein created; and (11) if any part of the Security is (or might be construed to be) attached to real estate prior to the perfection of the security interest granted herein, on demand of Secured Party, to furnish disclaimers of any interest in the Security which is or could be prior to Secured Party's interest, signed by all persons having an interest in the real estate.

B. Debtor further covenants and agrees that in case it fails to pay to Secured Party the full amount of the Guaranty of the Note of Massachusetts Central Railroad Corporation secured hereby within two (2) business days of a written demand for such payment by Secured Party (delivery to the address of Debtor at 805 Housatonic Avenue, Bridgeport, Connecticut being sufficient demand), then (1) Debtor shall be in default, and (2) it shall then be lawful for, and Debtor hereby authorizes and empowers Secured Party with the aid and assistance of any persons, (a) to enter upon the premises, where the Collateral is located or such other place as it Collateral may be found, and take possession and carry away the Collateral without process of law, and (b) at any time or times (i) to dispose of the Collateral and apply the

proceeds thereof to the indebtedness or any other obligation arising hereunder, all to the extent permitted by and in accordance with law including the provisions of the Uniform Commercial Code in effect in Connecticut, and (ii) to avail of any other remedy of a Secured Party under said Uniform Commercial Code, including but not limited to demanding that Debtor assemble the Collateral and make it available to the Secured party at a place reasonably convenient to Secured Party. Debtor waives a trial by jury and the right to interpose any counterclaim or offset of any nature or description in any litigation between Debtor and Secured Party with respect to this Agreement, any claim arising out of, relating to or connected with the loan secured hereby, the Collateral or the repossession thereof. Secured Party shall not by any act, delay or omission or otherwise be deemed to have waived any right or remedy on any future occasion. It is acknowledged with respect to the foregoing, that Secured Party has become the Assignee of Lessee's interest in the Lease by Lessee's assignment given simultaneously with this Security Agreement to, secure the Note, being guaranteed by Debtor herein, all of which will enable Secured Party to exercise its default remedies against the Collateral free of any leasehold interest.

In the event Debtor shall pay to Secured Party all sums demanded of Debtor under the terms of its Guaranty, Secured Party shall assign back to Debtor all rights granted herein to Secured Party in the Collateral and under the Lease, except to the extent that Secured Party shall nevertheless retain all such rights as security for the unpaid balance of the Promissory Note of Massachusetts Central Railroad Corporation guaranteed by Debtor herein, but the retained rights of Secured Party shall be subject to Debtor's prior rights to recover out of the Collateral and the Lease, the amounts paid to Secured Party under its Guaranty.

3. Financing Statements.

The Secured Party is expressly authorized to file a financing statement, or this document or any other appropriate document of recordation or notice with respect to this Security Agreement and Assignment, signed by the Secured Party for itself and as attorney in fact for the Debtor, in accordance with the Connecticut Uniform Commercial Code or other applicable law.

4. Debtor's Right to Possession.

Until default hereunder, Debtor shall have the right to quiet and peaceable possession of the Collateral and the full and free enjoyment of the same, under the terms of the Lease.

5. Miscellaneous.

A. Secured Party may assign, transfer and deliver its interest in the Collateral and thereby vest in the assignee all rights and powers given to Secured Party under this Agreement and Secured Party shall thereafter be relieved and fully discharged from any liability or responsibility to the Debtor in respect of this Agreement. In the event of such an assignment, the Debtor shall not assert against the assignee any claims, defense or set-off which it may then or thereafter have against Secured Party.

B. Secured Party may exercise its rights with respect to the Collateral without resorting or regard to other collateral or sources of reimbursement for liability. Secured Party shall not be deemed to have waived any of its rights against the Collateral unless such waiver be in writing and signed by the Bank. No delay or omission on the part of the Secured Party in exercising any rights against the Collateral shall operate as a waiver of such rights or any other rights.

C. Debtor shall pay to Secured Party on demand any and all expenses, including reasonable attorney fees incurred or paid by Secured Party in protecting or enforcing its rights in the Collateral or in collecting any part or all of the indebtedness.

D. This Agreement shall be binding and inure to the benefit of the heirs, personal representatives, successors and assigns of the Debtor and Secured Party. If there be more than one Debtor, the obligations hereunder shall be joint and several. This Agreement shall become effective when signed by the Debtor.

E. No waiver by Secured Party of any default hereunder shall constitute a waiver of any other default or of the same default on a future occasion, and Secured Party's rights hereunder are cumulative and not alternative.

F. The headings or captions of the various paragraphs and other divisions of this Agreement are intended for convenient reference only and neither form a part hereof nor are to be relied upon to interpret or modify any of the provisions of this Agreement.



6. Governing Law.

It is the intention of the parties that the provisions of this Agreement shall be in conformity with the laws of the State of Connecticut, and in particular the Uniform Commercial Code, which shall also govern the meaning of all terms used herein and with the laws of the United States of America to the extent that same govern the recordation of documents as notice to the world of the rights and obligations contained herein. If it should appear that any of the provisions hereof are in conflict with any statute or rule of law of Connecticut or the United States of America as aforesaid, then such provisions shall be deemed inoperative and null and void to the extent that they may conflict therewith and shall be deemed modified to the extent necessary to conform with such statute or rule of law and evidence the intention of the parties.

IN WITNESS WHEREOF, Secured Party and Debtor have caused this Agreement to be executed on or effective as of the date and year first set forth above.

DEBTOR HEREBY ACKNOWLEDGES RECEIPT OF A FULLY COMPLETED COPY OF THIS AGREEMENT.

Secured Party:

THE CONNECTICUT NATIONAL BANK

By Albert S. Smith, Jr.  
Vice President

Debtor:

EVEREADY MACHINERY COMPANY

By Edw. J. McCallum, Jr.  
Its President

PRINCIPAL PLACE OF BUSINESS OF  
DEBTOR:

805 Housatonic Avenue

Bridgeport, Connecticut 06604

ACKNOWLEDGMENT

STATE OF CONNECTICUT )  
 ) ss: Bridgeport  
COUNTY OF FAIRFIELD )

On this the 17<sup>th</sup> day of January, 1980, before me personally appeared Albert R Smith Jr, to me personally known, who being by me duly sworn, says that he is the Vice-President of Connecticut National Bank that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Michael Lelker

Commissioner of the Superior Court  
Notary Public

On this the 17<sup>th</sup> day of January, 1980, before me personally appeared Edward J McCallum Jr, to me personally know, who being by me duly sworn, says that he is the President of Eveready Machinery Company that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Michael Lelker

Commissioner of the Superior Court  
Notary Public

EXHIBIT A

GUARANTY

For and in consideration of One Dollar (\$1.00) and other valuable consideration received by The Eveready Machinery Company, a Connecticut corporation, with a principal place of business in Bridgeport, Connecticut, (hereinafter "the Guarantor"), to its full satisfaction of The Connecticut National Bank, a national banking institution with its principal place of business in Bridgeport, Connecticut (hereinafter "the Bank") and in further consideration of the making by the Bank of a loan of \$70,000 to the Massachusetts Central Railway Company, of Amherst, Massachusetts, (hereinafter "the Debtor"), the proceeds of which loan have been paid by the Debtor to the Guarantor as a portion of the non-refundable option price of a Lease with option to purchase dated January , 1980 entered into by the Guarantor as Lessor and the Debtor as Lessee, which loan enabled the Debtor to enter into said lease and without which the Guarantor would not have been able to consummate its Lease with option to purchase with the Debtor:

The Guarantor guarantees unconditionally to the Bank, its successors and assigns, the payment to the extent

of \$50,000 of a promissory note (hereinafter "the Note") in the principal amount of \$70,000 dated January 18, 1980, made by the Debtor payable to the Bank on demand, with interest, together with any legal expenses, including costs of suit, that may be incurred in collecting the Note. A copy of said Note is attached hereto and made a part hereof as Exhibit A.

Said Note is secured by the grant of a security interest and assignment by the Debtor to the Bank of all of the Debtor's right, title, and interest in and to the leasehold property that is the subject of the aforesaid lease, to wit: 1 EMD 1,000 H.P. Diesel Locomotive, formerly designated Southern Railway No. 2100 (hereinafter "the Leasehold Property").

It is expressly understood that the Bank may enforce this guaranty immediately upon default in any payment of principal or interest that may become due on said Note or upon any default (a) in the payment of taxes or assessments that may become a lien on the Leasehold Property, (b) in the payment of premiums of insurance covering the Leasehold Property, or (c) in the performance of any other obligation or undertaking contained in said Note, or assignment of lease or other instrument securing said Note; and

it shall in no case be necessary to the enforcement of this guaranty that the Bank proceed, bring suit, or procure any judgment against the Maker of said Note, or any other party thereto, nor shall any such action taken by the Bank against the Maker of the Note or any other party thereto, nor any action to recover on any security held for said Note or other guaranty of said Note, in any way affect or deprive the Bank of its right of action on this obligation.

This Guaranty shall not be discharged, affected or impaired by: (a) the death, incompetency, insolvency, bankruptcy, disenfranchisement or termination of the existence of the Makers or any guarantor of the Note; (b) any change in the name, composition or functions of the Maker or any change in the ownership of the Leasehold Property; (c) any renewal or extension of time of payment of said Note or any other change or changes in the manner or place of payment or other terms of said Note whatsoever (any such renewal, extension or change being hereby consented to by the undersigned); or (d) any act or omission of any kind upon the part of the Bank.

The incompetency, insolvency, bankruptcy, disenfranchisement or termination of the existence of the Guarantor shall not terminate the liability of the Guarantor hereunder.

Nothing shall end or terminate the liability of the Guarantor, or its successors and assigns, except (a) full payment and discharge of said Note or (b) written release of such Guarantor by the Bank.

The undersigned hereby waives notice of acceptance of this Guaranty, notice of any renewal, extension or change of any kind in the terms of said Note, presentment, demand, protest, notice of default and all other notice, and agrees that this Guaranty may be immediately or at any time enforced, regardless of any prior action or failure to act by the holder against the Maker or against any security or any recovery of any part of the indebtedness under the Note, until said Note is paid in full.

The intention of this Guaranty is that the undersigned shall be liable to the extent of \$50,000 regardless of any prior or subsequent recovery by the Bank from any security or from any other partner liable for the payment of said Note, until said indebtedness is paid in full.

This guaranty is secured by the grant of a security interest and assignment, all as contained in a Security Agreement and Assignment of even date herewith the terms of which are incorporated herein.

This agreement and guaranty shall be binding upon

the undersigned, and upon its respective successors and assigns.

IN WITNESS WHEREOF, The Eveready Machinery Company, by its President, Edward J. McCallum, Jr., authorized so to do, has caused to be set its hand and seal this      day of January, 1980.

THE EVEREADY MACHINERY COMPANY

By Edward J. McCallum, Jr.

SCHEDULE A

DEMAND NOTE

\$70,000.00

Bridgeport, Connecticut  
January 18 , 1980

For value received, MASSACHUSETTS CENTRAL RAILROAD CORPORATION, a Massachusetts corporation with an office and place of business in Amherst , Massachusetts (hereinafter called Maker) promises to pay ON DEMAND to THE CONNECTICUT NATIONAL BANK, (hereinafter called Bank) at its office located at 888 Main Street, Bridgeport, Connecticut the principal sum of SEVENTY THOUSAND and no/100 (\$70,000) DOLLARS, with interest from the date hereof on the unpaid principal sum, at the rate of Two (2%) percent above Bank's prime lending rate (the "Prime Rate") not in advance, together with all taxes assessed upon said sum against the holder hereof, and any costs and expenses, including reasonable attorney's fees, incurred in collection hereof or in the enforcement of, or exercise of any remedies under: i) any Guaranty of this Note, ii) any Security Agreement securing any such Guaranty of this Note, or, iii) any Pledge of property given to secure this Note, or in protecting or sustaining the lien of any of the aforesaid Security Agreements or Pledge. (The foregoing Security Agreements, Guaranties and Pledge being hereinafter referred to as the "Collateral Documents"). Prime Rate as herein used, shall mean that rate of interest charged by the Bank for short term borrowings by large credit-worthy borrowers, as such rate exists from day-to-day throughout the time during which principal shall be outstanding hereunder, all in the sole calculation of the Bank. Notwithstanding the foregoing, from and after a default hereunder or under any of the Collateral Documents, the interest rate per annum payable on the outstanding principal sum hereunder shall increase to four percent (4%) in excess of said Prime Rate.

If not sooner paid, the entire outstanding balance of principal and interest hereunder shall become due and payable, without demand ninety (90) days from the date of this Note; provided, however, that the entire balance of principal and interest outstanding hereunder shall become due and payable upon demand, at the option of the holder hereof, at any time after the date hereof.



Maker shall have the right to prepay this Note in full or in part at any time, without penalty.

Maker shall furnish to the holder annually, within ninety (90) days following the end of the Maker's fiscal year, financial statements prepared by a certified public accountant satisfactory to the holder and in such detail as the holder may reasonably require. Maker shall also furnish to the holder annually, with the foregoing statements, a list of the names and addresses of all of its stockholders, certified by its President or Secretary.

Anything herein to the contrary notwithstanding, the entire unpaid indebtedness, both principal and interest shall become due and payable on demand at the option of the holder hereof, upon or at any time after a sale or transfer of ownership of any of the capital stock of any corporate Maker. Maker shall give prior written notice to holder hereof of any such sale, transfer or other change prior to its consummation. The foregoing provisions shall not apply in the case of any transfer by will or intestate succession.

In the event of any default in the performance of any of the other conditions of this Note, the Collateral Documents or other instruments securing this Note, all of which are hereby made a part of this Note as fully as if herein set forth, then at the option of the holder of this Note, the entire amount of principal and interest remaining unpaid shall immediately become due and payable without notice.

In the event the Maker shall default in the payment of any installment of interest or principal for fifteen (15) days, the holder may collect a "Late Charge" not to exceed an amount equal to four per cent (4%) of the aggregate of any such installment of interest and principal.

MASSACHUSETTS CENTRAL  
RAILROAD CORPORATION

By Peter M. Dearness  
Peter M. Dearness  
Its President